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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,382	07/30/2003	Douglas Swingley	14442-1	9565

7590 07/28/2004

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EXAMINER

HOOK, JAMES F

ART UNIT PAPER NUMBER

3752

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/631,382

Applicant(s)

SWINGLEY, DOUGLAS

Examiner

James F. Hook

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Tuohey. The patent to Tuohey discloses the recited drain fitting 28 which is formed of a material said to be PVC where the specification designates the use of PVC to include all forms of PVC including chlorinated polyvinyl chloride (CPVC), where the water and debris carried by the gutter is considered waste, and where the fitting is used with other CPVC pipe components. The use of the term DWV is considered to be merely intended use of the fitting and the fitting of Tuohey is capable of use as a drain and therefore as a DWV also in that it is used as a drain.

Claims 1-4, 6, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Vanesky (577). The patent to Vanesky discloses the recited drain fitting 22 which is formed of a material such as ABS, PVC, or CPVC, where the fittings are used in home water drains which inherently would include sanitary waste, and where the fitting is used with other CPVC pipe components. The use of the term DWV is considered to be merely intended use of the fitting and the fitting of Vanesky is capable of use as a drain as set forth and therefore as a DWV also in that it is used as a drain.

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Claims 1-7, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaefer. The patent to Shaefer discloses the recited pipe fitting 10 which is formed of a material such as PVC or CPVC, where the fittings are used for fluid passages where the fluid is known to contain acids where CPVC exhibits a high degree of chemical resistance to acids, and where the fitting is used with other CPVC pipe components. The use of the term DWV is considered to be merely intended use of the fitting and the fitting of Shaefer is capable of use as a drain. The use of Shaefer in systems that would be exposed to acids suggests that the fittings therefore are used in some manner to inherently carry materials such as industrial process waste or sanitary waste, and most certainly acid waste when such is formed of CPVC.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Condon in view of Shaeffer. The patent to Condon discloses the recited DWV pipe fitting 66 formed of PVC or ABS. The patent to Condon discloses all of the recited structure with the exception of forming the fitting of CPVC for use in various waste drains. The use of the DWV fitting to handle various types of waste is considered to be an inherent ability of the material used and a teaching of the use of CPVC is considered to be teaching a material capable of carrying all the types of waste listed in the claims in

that the material is the same as used by applicant and would inherently be usable for the same types of applications as such is merely intended use. The patent to Shaeffer teaches the use of CPVC as an equivalent material used in where PVC is used in fittings to provide chemical resistance to acids and other materials. It would have been obvious to one skilled in the art to modify the DWV fitting in Condon by substituting CPVC for PVC to allow the fitting to be used in drains that would be exposed to acids or other dangerous materials as suggested by Shaeffer as such would lengthen the life of the fitting due to the improved properties of CPVC in acidic uses.

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaeffer. The patent to Shaeffer discloses all of the recited method with the exception of using the fitting for specific types of waste, however, it is noted that Shaeffer discloses the use of the fitting for various materials and inherently the use of CPVC would be capable of use to carry other types of acidic wastes because such is merely a feature of the material used, and a choice of mechanical expedients to use the fitting for other types of acidic materials, therefore it would have been obvious to one skilled in the art to use the fitting in Shaeffer for any type of acidic material including various types of acidic waste as such is merely a choice of mechanical expedients.

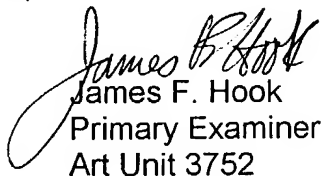
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Timmons, McPherson, Hartitz, Platusich, Vanesky (036), Richards and Lillig disclosing state of the art fittings some made of CPVC.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3752

JFH